Case No. 16-56666

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STEVE CHAMBERS; et al.
Plaintiffs – Appellees,
v.

CHRISTINE KNOTT
Objector – Appellant
v.

WHIRLPOOL CORPORATION, et al.,
Defendants – Appellees

Appeal from The United States District Court
For the Central District of California
The Honorable Fernando M. Olguin, Presiding

OPPOSITION TO OBJECTOR-APPELLANT CHRISTINE KNOTT'S MOTION FOR SUMMARY REVERSAL

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Plaintiffs-Appellees, and the certified Class they represent, respectfully submit this Opposition to Objector-Appellant Christine Knott's Motion for Summary Reversal ("Motion"). The Motion seeking summary reversal of the district court's fee award is unwarranted and should be denied. The district court did not abuse its discretion by awarding attorneys' fees of $14.8 million, nor did the district court commit any error in its application of the law. Ms. Knott and her counsel, notorious serial-objector Christopher Bandas, grossly misrepresent the district court's analysis.[1] Whether intended as a "Hail Mary" pass to avoid merits briefing, or merely an attempt to impose additional burdens on the parties, the Motion is improper.

The district court did not "refus[e] to apply the Class Action Fairness Act," as Ms. Knott falsely claims. Motion, at p. 1. To the contrary, applying relevant precedent, including this Court's decision in *HP Inkjet*,[2] the district court concluded that, "where, as here, the settlement includes both coupon relief and monetary relief, CAFA authorizes the court to calculate attorneys' fee utilizing the lodestar method." Order re Motions for Final Approval and Attorneys' Fees ("Op."), ECF 351, at 19-20.

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[1] As noted by the district court, Ms. Knott's counsel, Mr. Bandas, is a serial objector who is "well known for routinely filing meritless objections to class action settlements for the improper purpose of extracting a fee rather than to benefit the class." Op. at 12.

[2] *In re HP Inkjet Printer Litig.*, 716 F.3d 1173, 1179 (9th Cir. 2013).

Nor did the district court award fees "based on class counsel's maximum theoretical value of the settlement," as Ms. Knott falsely asserts. Motion at p. 1. To the contrary, the district court awarded a *lodestar-based* fee, driven by its conclusions that: (1) class counsel's lodestar of $8.8 million over the five-year course of litigation was reasonable[3]; (2) the settlement "results obtained by class counsel are impressive;" (3) "class counsel took an extremely risky and complicated case, invested a lot of time and resources, and achieved a good result for the class;" (4) "[a]chieving these results undoubtedly took a high level of skill on the part of counsel, … [who are] among the most capable and experienced lawyers in the country in these kinds of cases;" and (5) based on the above and applying the relevant *Kerr*[4] factors, the 1.68 multiple requested by Class

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[3] The district court exhaustively examined the reasonableness of Class Counsel's hourly rates and lodestar. Moreover, Defendants conceded that the reasonableness of the number of hours worked by Class Counsel because Defense counsel "worked comparable hours" over the five-year course of the litigation. Transcr. of August 25, 2016 hearing, at 48:8-9 (emphasis added).

[4] *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir.1975).

Counsel "is in line with, if not lower than, the multiples applied by courts in similar complex class actions." Op. at 28-30.

Incredibly, Ms. Knott's prior deposition testimony directly contradicts the objections being pressed in the Motion. As reflected in the district court's order, Ms. Knott testified at her deposition "that she would not object to a fee award of $27 million to class counsel, … and believes the rebates provided under the settlement are valuable even if the rebate-holder does not purchase a new Whirlpool dishwasher." Op. at 13-14 (citations to deposition transcript omitted).[5]

Fundamentally, this is not a "coupon" settlement. The settlement in this case covers over 18 million dishwashers, or roughly 15% of all households in the United States. Plaintiffs alleged that these dishwashers were designed with defective electrical connections to the electronic control board, which can overheat and catch fire. The relief afforded by the settlement is both far-reaching and tailored to the facts revealed through discovery, and includes: (1) reimbursement of 100% of repair costs for

[5] Moreover, Ms. Knott also testified that she never spoke with a lawyer before her objection was filed, which, combined with her prior contradictory testimony, raises a question whether she even authorized the Motion to be filed on her behalf

covered dishwashers that experienced an overheating event, or $200-$300 cash if the owner elected to purchase a new dishwasher rather than repair; (2) coverage for future overheating events for an estimated 13.4 million dishwashers through as late as the year 2021; (3) a rebate program entitling current or former owners of certain models of dishwashers to rebates of 10-20% on the purchase price of Whirlpool-manufactured dishwashers, even if they never experienced an overheating event[6]; and (4) new safety warnings to be placed in Service Kit instructions and Training Bulletins about the dangers of modifying the thermal cutoff device in dishwashers, which proved to be a significant factor in overheating events that spiraled into serious house fires. The rebate program, which will not be complete for at least 8 more months, is just one piece of the substantial relief afforded by this settlement. The attempt by Ms. Knott and Mr. Bandas to portray the settlement as a pure coupon settlement and their blatant misrepresentation of the district court's CAFA analysis are improper.

Summary adjudication is appropriate only when "the outcome of a case is beyond dispute ," and "it is manifest that the questions on which

[6] The rebate component covers approximately 6 million dishwashers that were manufactured from 2001 to 2006.

the decision of the cause depends are so unsubstantial as not to need further argument." *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982). On the other hand, "where the outcome is not so clear, such a motion unduly burdens the parties and the court, and ultimately may even delay disposition of the appeal." *Id.* The Motion filed by Ms. Knott and her lawyer mischaracterizes the district court's opinion and the settlement, it is meritless, and it imposes undue burdens on the Court and the parties. It should be denied.

Finally, in addition to the appeal filed by Ms. Knott and her counsel, two other serial objectors and Defendants also filed pending (meritless) appeals of the district court's award of fees, approval of the settlement, or both.[7] All of the appeals should be consolidated, and briefed and argued in the normal course.

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[7] In addition, two other serial objectors filed appeals, but one was dismissed by the Court, appeal number16-56436, and another was voluntarily dismissed by the objector, appeal number 16-56686.

Dated: December 13, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on this the 13th day of December, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system thus effectuating service of such filing all ECF registered attorneys in this case.

/s/ Timothy N. Mathews
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